

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4619**

BY DELEGATES SHOTT, LANE AND ELLINGTON

[Introduced February 19, 2016; Referred  
to the Committee on Health and Human Resources then  
Government Organization.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by amending and reenacting  
2 §16-4C-2, §16-4C-3, §16-4C-4, §16-4C-5, §16-4C-6, §16-4C-6a, §16-4C-6b, §16-4C-6c,  
3 §16-4C-8, §16-4C-9, §16-4C-10, §16-4C-12, §16-4C-13, §16-4C-14, §16-4C-15, §16-4C-  
4 16, §16-4C-20, §16-4C-21 and §16-4C-23, all relating to the office of emergency medical  
5 services generally, transferring said office from the Bureau for Public Health to the  
6 Department of Military Affairs and Public Safety, the purposes of such regulation, the  
7 definitions, creation of and staffing of the office of emergency medical services, the  
8 Emergency Medical Services Advisory Council and its duties, composition, appointment,  
9 meetings, compensation and expenses, revising the powers and duties of the  
10 commissioner to be powers and duties of the secretary, altering administration of  
11 emergency medical services agency licensure, altering the administration of Emergency  
12 Medical Services Agency Licensure Fund and its annual report, altering the certifying  
13 authority for emergency medical technician-industrial, altering the rule-making authority  
14 for prescription of standards for emergency medical service personnel, revising the  
15 commissioner's role in the complaint process to be the responsibility of the secretary,  
16 revising the commissioner's role in the hearings and appeals process to be the  
17 responsibility of the secretary, allowing the secretary to inform law enforcement of  
18 prosecutable wrongdoing, allowing the secretary to seek injunctive relief for violations,  
19 giving the secretary rule-making authority for services that may be performed by  
20 emergency medical service personnel, providing that reports of services performed during  
21 disasters shall now be made to the secretary, providing that proof of mandatory insurance  
22 coverage shall be provided to the secretary, providing the secretary power to enter into  
23 service reciprocity agreements, providing the secretary power to bar emergency medical  
24 services by out-of-state emergency medical service personnel or providers, and granting  
25 the secretary rule-making authority generally.

*Be it enacted by the Legislature of West Virginia:*

1 That §16-4C-2, §16-4C-3, §16-4C-4, §16-4C-5, §16-4C-6, §16-4C-6a, §16-4C-6b, §16-  
 2 4C-6c, §16-4C-8, §16-4C-9, §16-4C-10, §16-4C-12, §16-4C-13, §16-4C-14, §16-4C-15, §16-4C-  
 3 16, §16-4C-20, §16-4C-21, and §16-4C-23 of the Code of West Virginia, 1931, as amended, be  
 4 amended and reenacted, all to read as follows:

**ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.**

**§16-4C-2. Purposes of article.**

1 The Legislature finds and declares: (1) That the safe and efficient operation of life-saving  
 2 and life-preserving emergency medical service to meet the needs of citizens of this state is a  
 3 matter of general public interest and concern; (2) to ensure the provision of adequate emergency  
 4 medical services within this state for the protection of the public health, safety and welfare, it is  
 5 imperative that minimum standards for emergency medical service personnel be established and  
 6 enforced by the state; (3) that emergency medical service personnel should meet minimum  
 7 training standards promulgated by the commissioner; (4) that it is the public policy of this state to  
 8 enact legislation to carry out these purposes and comply with minimum standards for emergency  
 9 medical service personnel as specified herein; (5) that any patient who receives emergency  
 10 medical service and who is unable to consent thereto should be liable for the reasonable cost of  
 11 such service; and (6) that it is the public policy of this state to encourage emergency medical  
 12 service providers to do those things necessary to carry out the powers conferred in this article  
 13 unless otherwise forbidden by law.

**§16-4C-3. Definitions.**

1 As used in this article, unless the context clearly requires a different meaning:

2 (a) "Ambulance" means any privately or publicly-owned vehicle or aircraft which is  
 3 designed, constructed or modified; equipped or maintained; and operated for the transportation  
 4 of patients, including, but not limited to, emergency medical services vehicles; rotary and fixed  
 5 wing air ambulances; gsa kkk-A-1822 federal standard type I, type II and type III vehicles; and  
 6 specialized multipatient medical transport vehicles operated by an emergency medical services

7 agency;

8 ~~(b)~~ "Commissioner" means the Commissioner of the Bureau for Public Health;

9 ~~(e)~~ (b) "Council" means the Emergency Medical Service Advisory Council created  
10 pursuant to this article;

11 ~~(d)~~ (c) "Director" means the Director of the Office of Emergency Medical Service in the  
12 Bureau for Public Health.

13 ~~(e)~~ (d) "Emergency Medical Services" means all services which are set forth in Public Law  
14 93-154 "The Emergency Medical Services Systems Act of 1973" and those included in and made  
15 a part of the emergency medical services plan of the Department of Health and Human Resources  
16 inclusive of, but not limited to, responding to the medical needs of an individual to prevent the loss  
17 of life or aggravation of illness or injury;

18 ~~(f)~~ (e) "Emergency medical service agency" means any agency licensed under section six-  
19 a of this article to provide emergency medical services;

20 ~~(g)~~ (f) "Emergency medical service personnel" means any person certified by the  
21 commissioner to provide emergency medical services as set forth by legislative rule;

22 ~~(h)~~ (g) "Emergency medical service provider" means any authority, person, corporation,  
23 partnership or other entity, public or private, which owns or operates a licensed emergency  
24 medical services agency providing emergency medical service in this state;

25 ~~(i)~~ (h) "Governing body" has the meanings ascribed to it as applied to a municipality in  
26 subdivision (1), subsection (b), section two, article one, chapter eight of this code;

27 ~~(j)~~ (i) "Line officer" means the emergency medical service personnel, present at the scene  
28 of an accident, injury or illness, who has taken the responsibility for patient care;

29 ~~(k)~~ (j) "Medical command" means the issuing of orders by a physician from a medical  
30 facility to emergency medical service personnel for the purpose of providing appropriate patient  
31 care;

32 ~~(l)~~ (k) "Municipality" has the meaning ascribed to it in subdivision (1), subsection (a),

33 section two, article one, chapter eight of this code;

34 ~~(m)~~ (l) "Patient" means any person who is a recipient of the services provided by  
35 emergency medical services;

36 (m) "Secretary" means the secretary of the Department of Military Affairs and Public  
37 Safety;

38 (n) "Service reciprocity" means the provision of emergency medical services to citizens of  
39 this state by emergency medical service personnel certified to render those services by a  
40 neighboring state;

41 (o) "Small emergency medical service provider" means any emergency medical service  
42 provider which is made up of less than twenty emergency medical service personnel; and

43 (p) "Specialized multipatient medical transport" means a type of ambulance transport  
44 provided for patients with medical needs greater than those of the average population, which may  
45 require the presence of a trained emergency medical technician during the transport of the patient:  
46 *Provided, That the requirement of "greater medical need" may not prohibit the transportation of a*  
47 *patient whose need is preventive in nature.*

**§16-4C-4. Office of emergency medical services created; staffing.**

1 There is hereby created within state government under the ~~commissioner of the bureau of~~  
2 ~~public health~~ secretary of the Department of Military Affairs and Public Safety an office to be  
3 known as the office of emergency medical services.

4 The ~~commissioner~~ secretary may employ any technical, clerical, stenographic and other  
5 personnel as may be necessary to carry out the purposes of this article. The personnel may be  
6 paid from funds appropriated therefor or from other funds as may be made available for carrying  
7 out the purposes of this article.

8 The office of emergency medical services as created by former section four, article four-d  
9 of this chapter, shall continue in existence as the office of emergency medical services  
10 established by this section.

**§16-4C-5. Emergency Medical Services Advisory Council; duties; composition; appointment; meetings; compensation and expenses.**

1 (a) The Emergency Medical Services Advisory Council, heretofore created and  
2 established by former section seven of this article, is continued for the purpose of developing,  
3 with the ~~Commissioner~~ secretary, standards for emergency medical service personnel and for the  
4 purpose of providing advice to the Office of Emergency Medical Services and the Commissioner  
5 with respect to reviewing and making recommendations for, and providing assistance to, the  
6 establishment and maintenance of adequate emergency medical services for all portions of this  
7 state.

8 (b) The council shall have the duty to advise the ~~Commissioner~~ secretary in all matters  
9 pertaining to his or her duties and functions in relation to carrying out the purposes of this article.

10 (c) The council shall be composed of fifteen members appointed by the Governor by and  
11 with the advice and consent of the Senate. The Mountain State Emergency Medical Services  
12 Association shall submit to the Governor a list of six names of representatives from its association  
13 and a list of three names shall be submitted to the Governor of representatives of their respective  
14 organizations by the county commissioners' association of West Virginia, the West Virginia State  
15 Firemen's Association, the West Virginia Hospital Association, the West Virginia Chapter of the  
16 American College of Emergency Physicians, the West Virginia Emergency Medical Services  
17 Administrators Association, the West Virginia Emergency Medical Services Coalition, the  
18 Ambulance Association of West Virginia and the State Department of Education. The Governor  
19 shall appoint from the respective lists submitted two persons who represent the Mountain State  
20 Emergency Medical Services Association, one of whom shall be a paramedic and one of whom  
21 shall be an emergency medical technician-basic; and one person from the county commissioners'  
22 Association of West Virginia, the West Virginia State Firemen's Association, the West Virginia  
23 Hospital Association, the West Virginia Chapter of the American College of Emergency  
24 Physicians, the West Virginia Emergency Medical Services Administrators Association, the West

25 Virginia Emergency Medical Services Coalition, the Ambulance Association of West Virginia and  
26 the State Department of Education. In addition, the Governor shall appoint one person to  
27 represent emergency medical service providers operating within the state, one person to  
28 represent small emergency medical service providers operating within this state and three  
29 persons to represent the general public. Not more than six of the members may be appointed  
30 from any one congressional district.

31 (d) Each term is to be for three years and no member may serve more than four  
32 consecutive terms.

33 (e) The council shall choose its own chairman and meet at the call of the ~~Commissioner~~  
34 secretary at least twice a year.

35 (f) The members of the council shall receive compensation and expense reimbursement  
36 in an amount not to exceed the same compensation and expense reimbursement as is paid to  
37 members of the Legislature for their interim duties as recommended by the Citizens Legislative  
38 Compensation Commission and authorized by law for each day or substantial portion thereof  
39 engaged in the performance of official duties.

**§16-4C-6. Powers and duties of ~~commissioner~~ secretary.**

1 The ~~commissioner~~ secretary has the following powers and duties:

2 (a) To propose rules for legislative approval in accordance with the provisions of article  
3 three, chapter twenty-nine-a of this code: *Provided*, That the rules have been submitted at least  
4 thirty days in advance for review by the Emergency Medical Services Advisory Council, who may  
5 act only in the presence of a quorum. The rules may include:

6 (1) Standards and requirements for certification and recertification of emergency medical  
7 service personnel, including, but not limited to:

8 (A) Age, training, testing and continuing education;

9 (B) Procedures for certification and recertification, and for denying, suspending, revoking,  
10 reinstating and limiting a certification or recertification;

- 11 (C) Levels of certification and the scopes of practice for each level;
- 12 (D) Standards of conduct; and
- 13 (E) Causes for disciplinary action and sanctions which may be imposed.
- 14 (2) Standards and requirements for licensure and licensure renewals of emergency
- 15 medical service agencies, including:
  - 16 (A) Operational standards, levels of service, personnel qualifications and training,
  - 17 communications, public access, records management, reporting requirements, medical direction,
  - 18 quality assurance and review, and other requirements necessary for safe and efficient operation;
  - 19 (B) Inspection standards and establishment of improvement periods to ensure
  - 20 maintenance of the standards;
  - 21 (C) Fee schedules for licensure, renewal of licensure and other necessary costs;
  - 22 (D) Procedures for denying, suspending, revoking, reinstating or limiting an agency
  - 23 licensure;
  - 24 (E) Causes for disciplinary action against agencies; and
  - 25 (F) Administrative penalties, fines and other disciplinary sanctions which may be imposed
  - 26 on agencies;
- 27 (3) Standards and requirements for emergency medical service vehicles, including
- 28 classifications and specifications;
- 29 (4) Standards and requirements for training institutions, including approval or accreditation
- 30 of sponsors of continuing education, course curricula and personnel;
- 31 (5) Standards and requirements for a State Medical Direction System, including
- 32 qualifications for a state emergency medical services medical director and regional medical
- 33 directors, the establishment of a State Medical Policy and Care Committee and the designation
- 34 of regional medical command centers;
- 35 (6) Provision of services by emergency medical services personnel in hospital emergency
- 36 rooms;

37           (7) Authorization to temporarily suspend the certification of an individual emergency  
38 medical service provider prior to a hearing or notice if the commissioner finds there is probable  
39 cause that the conduct or continued service or practice of any individual certificate holder has or  
40 may create a danger to public health or safety: *Provided*, That the commissioner may rely on  
41 information received from a physician that serves as a medical director in finding that probable  
42 cause exists to temporarily suspend the certification; and

43           (8) Any other rules necessary to carry out the provisions of this article.

44           (b) To apply for, receive and expend advances, grants, contributions and other forms of  
45 assistance from the state or federal government or from any private or public agencies or  
46 foundations to carry out the provisions of this article.

47           (c) To design, develop and review a Statewide Emergency Medical Services  
48 Implementation Plan. The plan shall recommend aid and assistance and all other acts necessary  
49 to carry out the purposes of this article:

50           (1) To encourage local participation by area, county and community officials and regional  
51 emergency medical services boards of directors; and

52           (2) To develop a system for monitoring and evaluating emergency medical services  
53 programs throughout the state.

54           (d) To provide professional and technical assistance and to make information available to  
55 regional emergency medical services boards of directors and other potential applicants or  
56 program sponsors of emergency medical services for purposes of developing and maintaining a  
57 statewide system of services.

58           (e) To assist local government agencies, regional emergency medical services boards of  
59 directors and other public or private entities in obtaining federal, state or other available funds and  
60 services.

61           (f) To cooperate and work with federal, state and local governmental agencies, private  
62 organizations and other entities as may be necessary to carry out the purposes of this article.

63 (g) To acquire in the name of the state by grant, purchase, gift, devise or any other  
64 methods appropriate real and personal property as may be reasonable and necessary to carry  
65 out the purposes of this article.

66 (h) To make grants and allocations of funds and property so acquired or which may have  
67 been appropriated to the agency to other agencies of state and local government as may be  
68 appropriate to carry out the purposes of this article.

69 (i) To expend and distribute by grant or bailment funds and property to all state and local  
70 agencies for the purpose of performing the duties and responsibilities of the agency all funds  
71 which it may have so acquired or which may have been appropriated by the Legislature of this  
72 state.

73 (j) To develop a program to inform the public concerning emergency medical services.

74 (k) To review and disseminate information regarding federal grant assistance relating to  
75 emergency medical services.

76 (l) To prepare and submit to the Governor and Legislature recommendations for legislation  
77 in the area of emergency medical services.

78 (m) To review, make recommendations for and assist in all projects and programs that  
79 provide for emergency medical services whether or not the projects or programs are funded  
80 through the Office of Emergency Medical Services. A review and approval shall be required for  
81 all emergency medical services projects, programs or services for which application is made to  
82 receive state or federal funds for their operation after the effective date of this act; and

83 (n) To take all necessary and appropriate action to encourage and foster the cooperation  
84 of all emergency medical service providers and facilities within this state.

**§16-4C-6a. Emergency medical services agency licensure.**

1 (a) Any person who proposes to establish or maintain an emergency medical services  
2 agency shall file an application with the ~~commissioner~~ secretary which includes the identity of the  
3 applicant, any parent or affiliated entity, the proposed level of service and the number of

4 emergency medical service response vehicles of the agency or proposed agency. The  
5 ~~commissioner~~ secretary may require that additional information be included on each application.

6 (b) Upon receipt and review of the application the ~~commissioner~~ secretary shall issue a  
7 license if he or she finds that the applicant meets the requirements and quality standards, to be  
8 established by the ~~commissioner~~ secretary, for an emergency medical services agency license,  
9 and if the applicant has certified under penalty of perjury that he or she is current with all lawful  
10 obligations owed the State of West Virginia, excluding obligations owed in the current quarter,  
11 including, but not limited to, payment of taxes and workers' compensation premiums: *Provided,*  
12 That the certification set forth in this paragraph is required for the original application and  
13 subsequent renewals.

**§16-4C-6b. Establishment of emergency medical services agency licensure fund;  
authorized expenditures; annual report.**

1 (a) There is established in the State Treasury a special revenue fund designated the  
2 "Emergency Medical Services Agency Licensure Fund", which shall be administered by the  
3 ~~Commissioner of the Bureau of Public Health~~ Secretary of the Department of Military Affairs and  
4 Public Safety.

5 (b) All application, personnel certification and recertification and agency licensing fees  
6 collected pursuant to the provisions of sections six, six-a and eight of this article shall be deposited  
7 into the fund and expended in accordance with the agency licensure and personnel certification  
8 and recertification duties imposed in this article.

9 (c) Any remaining balance, including accrued interest, in the fund at the end of the fiscal  
10 year shall not revert to the General Revenue Fund, but shall remain in the account.

11 (d) On or before January 1 of each year, the commissioner shall provide the Legislature  
12 with an annual fiscal year report on the emergency medical services agency licensure account  
13 including, but not limited to, the previous fiscal year's expenditures; projected expenditures for  
14 the current and next fiscal years; the number of agency licenses and personnel certifications and

15 recertifications issued, denied, suspended or revoked; and, the status of licensure and  
16 certification hearings and court actions.

**§16-4C-6c. Certification requirements for emergency medical technician-industrial.**

1 (a) Commencing July 1, 2014, an applicant for certification as an emergency medical  
2 technician-industrial shall:

- 3 (1) Be at least eighteen years old;
- 4 (2) Apply on a form prescribed by the ~~Commissioner~~ secretary;
- 5 (3) Pay the application fee;
- 6 (4) Possess a valid cardiopulmonary resuscitation (CPR) certification;
- 7 (5) Successfully complete an emergency medical technician-industrial education program  
8 authorized by the ~~Commissioner~~ secretary in consultation with the board of Miner Training,  
9 Education and Certification; and

10 (6) Successfully complete emergency medical technician-industrial cognitive and skills  
11 examinations authorized by the ~~Commissioner~~ secretary in consultation with the board of Miner  
12 Training, Education and Certification.

13 (b) The emergency medical technician-industrial certification is valid for three years.

14 (c) A certified emergency medical technician-industrial is only authorized to practice during  
15 his or her regular employment on industrial property. For the purposes of this section, "industrial  
16 property" means property being used for production, extraction or manufacturing activities.

17 (d) To be recertified as an emergency medical technician-industrial, a certificate holder  
18 shall:

- 19 (1) Apply on a form prescribed by the ~~commissioner~~ secretary;
- 20 (2) Pay the application fee;
- 21 (3) Possess a valid cardiopulmonary resuscitation (CPR) certification;
- 22 (4) Successfully complete one of the following:
- 23 (A) A one-time thirty-two hour emergency medical technician-industrial recertification

24 course authorized by the ~~commissioner~~ secretary in consultation with the board of Miner Training,  
25 Education and Certification; or

26 (B) Three annual eight-hour retraining and testing programs authorized by the  
27 commissioner in consultation with the board of Miner Training, Education and Certification; and

28 (5) Successfully complete emergency medical technician-industrial cognitive and skills  
29 recertification examinations authorized by the commissioner in consultation with the board of  
30 Miner Training, Education and Certification.

31 (e) Commencing July 1, 2014, the certification for emergency medical technician-miner,  
32 also known as emergency medical technician-mining, shall be known as the certification for  
33 emergency medical technician-industrial, and the certification is valid until the original expiration  
34 date, at which time the person may recertify as an emergency medical technician-industrial  
35 pursuant to this section.

36 (f) The education program, training, courses, and cognitive and skills examinations  
37 required for certification and recertification as an emergency medical technician-miner, also  
38 known as emergency medical technician-mining, in existence on January 1, 2014, shall remain in  
39 effect for the certification and recertification of emergency medical technician-industrial until they  
40 are changed by legislative rule by the ~~commissioner~~ secretary in consultation with the board of  
41 Miner Training, Education and Certification.

42 (g) The administration of the emergency medical technician-industrial certification and  
43 recertification program by the ~~commissioner~~ secretary shall be done in consultation with the board  
44 of Miner Training, Education and Certification.

45 (h) The ~~commissioner~~ secretary shall propose rules for legislative approval, pursuant to  
46 the provisions of article three, chapter twenty-nine-a of this code, in consultation with the board  
47 of Miner Training, Education and Certification, and may propose emergency rules, to:

48 (1) Establish emergency medical technician-industrial certification and recertification

49 courses and examinations;

50 (2) Authorize providers to administer the certification and recertification courses and  
51 examinations, including mine training personnel, independent trainers, community and technical  
52 colleges, and Regional Educational Service Agencies (RESA): *Provided*, That the mine training  
53 personnel and independent trainers must have a valid cardiopulmonary resuscitation (CPR)  
54 certification and must be an approved MSHA or OSHA certified instructor;

55 (3) Establish a fee schedule: *Provided*, That the application fee may not exceed ten dollars  
56 and there shall be no fee for a certificate; and

57 (4) Implement the provisions of this section.

**§16-4C-8. Standards for emergency medical service personnel.**

1 (a) Every ambulance operated by an emergency medical service agency shall carry at  
2 least two personnel. At least one person shall be certified in cardiopulmonary resuscitation or first  
3 aid and the person in the patient compartment shall be certified as an emergency medical  
4 technician-basic at a minimum except that in the case of a specialized multipatient medical  
5 transport, only one staff person is required and that person shall be certified, at a minimum, at the  
6 level of an emergency medical technician-basic. The requirements of this subsection will remain  
7 in effect until revised by the legislative rule to be promulgated pursuant to subsection (b) of this  
8 section.

9 (b) On or before May 28, 2010, the ~~commissioner~~ secretary shall submit a proposed  
10 legislative rule to the Emergency Medical Services Advisory Council for review, and on or before  
11 June 30, 2010, shall file the proposed legislative rule with the office of the Secretary of State, in  
12 accordance with the provisions of chapter twenty-nine-a, article three of this code, to establish  
13 certification standards for emergency medical vehicle operators and to revise the requirements  
14 for emergency medical service personnel.

15 (c) As of the effective date of the legislative rule to be promulgated pursuant to subsection

16 (b) of this section, emergency medical service personnel who operate ambulances shall meet the  
17 requirements set forth in the legislative rule.

18 (d) Any person desiring emergency medical service personnel certification shall apply to  
19 the ~~commissioner~~ secretary using forms and procedures prescribed by the commissioner. Upon  
20 receipt of the application, the commissioner shall determine whether the applicant meets the  
21 certification requirements and may examine the applicant, if necessary to make that  
22 determination.

23 (e) The applicant shall submit to a national criminal background check, the requirement of  
24 which is declared to be not against public policy.

25 (1) The applicant shall meet all requirements necessary to accomplish the national  
26 criminal background check, including submitting fingerprints, and authorizing the West Virginia  
27 Office of Emergency Medical Services, the West Virginia State Police and the Federal Bureau of  
28 Investigation to use all records submitted and produced for the purpose of screening the applicant  
29 for certification.

30 (2) The results of the national criminal background check may not be released to or by a  
31 private entity.

32 (3) The applicant shall submit a fee of \$75 for initial certification and a fee of \$50 for  
33 recertification. The fees set forth in this subsection remain in effect until modified by legislative  
34 rule.

35 (f) An application for an original, renewal or temporary emergency medical service  
36 personnel certificate or emergency medical services agency license, shall be acted upon by the  
37 ~~commissioner~~ secretary and the certificate or license delivered or mailed, or a copy of any order  
38 of the ~~commissioner~~ secretary denying any such application delivered or mailed to the applicant,  
39 within fifteen days after the date upon which the complete application including test scores and  
40 background checks, if applicable, was received by the ~~commissioner~~ secretary.

41 (g) Any person may report to the ~~commissioner~~ secretary or the Director of the Office of  
42 Emergency Medical Services information he or she may have that appears to show that a person  
43 certified by the ~~commissioner~~ secretary may have violated the provisions of this article or  
44 legislative rules promulgated pursuant to this article. A person who is certified by the  
45 ~~commissioner~~ secretary, who knows of or observes another person certified by the commissioner  
46 violating the provisions of this article or legislative rules promulgated pursuant to this article, has  
47 a duty to report the violation to the ~~commissioner~~ secretary or director. Any person who reports  
48 or provides information in good faith is immune from civil liability.

49 (h) The ~~commissioner~~ secretary may issue a temporary emergency medical service  
50 personnel certificate to an applicant, with or without examination of the applicant, when he or she  
51 finds that issuance to be in the public interest. Unless suspended or revoked, a temporary  
52 certificate shall be valid initially for a period not exceeding one hundred twenty days and may not  
53 be renewed unless the ~~commissioner~~ secretary finds the renewal to be in the public interest.

**§16-4C-9. Complaints; investigations; due process procedure; grounds for disciplinary  
action.**

1 (a) The ~~commissioner~~ secretary may at any time upon his or her own motion, and shall,  
2 upon the written complaint of any person, cause an investigation to be conducted to determine  
3 whether grounds exist for disciplinary action under this article or legislative rules promulgated  
4 pursuant to this article.

5 (b) An investigator or other person who, under the direction of the ~~commissioner~~ secretary  
6 or the director, gathers or reports information in good faith to the ~~commissioner~~ secretary or the  
7 director, is immune from civil liability.

8 (c) After reviewing any information obtained through an investigation, the ~~commissioner~~  
9 secretary or director shall determine if probable cause exists that the licensee or certificate holder  
10 has violated any provision of this article or rules promulgated pursuant to this article.

11 (d) Upon a finding that probable cause exists that the licensee or certificate holder has  
12 violated any provision of this article or rules promulgated pursuant to this article, the ~~commissioner~~  
13 secretary or director shall provide a copy of the complaint and notice of hearing to the licensee or  
14 certificate holder. Upon a finding of probable cause that the conduct or continued service or  
15 practice of any individual certificate holder may create a danger to public health or safety, the  
16 ~~commissioner~~ secretary may temporarily suspend the certification prior to a hearing or notice:  
17 *Provided, That the ~~commissioner~~ secretary may rely on information received from a physician*  
18 *that serves as a medical director in finding that probable cause exists to temporarily suspend the*  
19 *certification: *Provided, however, That the ~~commissioner~~ secretary shall simultaneously institute**  
20 *proceedings for a hearing in accordance with section ten of this article.*

21 (e) The ~~commissioner~~ secretary or the director may enter into a consent decree or hold a  
22 hearing for the suspension or revocation of the license or certification or the imposition of  
23 sanctions against the licensee or certificate holder.

24 (f) The ~~commissioner~~ secretary or the director issue subpoenas and subpoenas duces  
25 tecum to obtain testimony and documents to aid in the investigation of allegations against any  
26 person or agency regulated by the article.

27 (g) The ~~commissioner~~ secretary or the director may sign a consent decree or other legal  
28 document related to the complaint.

29 (h) The ~~commissioner~~ secretary shall suspend or revoke any certificate, temporary  
30 certificate or license when he or she finds the holder has:

31 (1) Obtained a certificate, temporary certificate or license by means of fraud or deceit; or

32 (2) Been grossly incompetent, and/or grossly negligent as defined by the ~~commissioner~~  
33 secretary in accordance with rules or by prevailing standards of emergency medical services care;

34 or

35 (3) Failed or refused to comply with the provisions of this article or any legislative rule

36 promulgated by the ~~commissioner~~ secretary or any order or final decision of the ~~commissioner~~  
37 secretary; or

38 (4) Engaged in any act during the course of duty which has endangered or is likely to  
39 endanger the health, welfare or safety of the public.

40 (i) The ~~commissioner~~ secretary or the director may, after notice and opportunity for  
41 hearing, deny or refuse to renew, suspend or revoke the license or certification of, impose  
42 probationary conditions upon or take disciplinary action against, any licensee or certificate holder  
43 for any violation of this article or any rule promulgated pursuant to this article, once a violation has  
44 been proven by a preponderance of the evidence.

45 (j) Disciplinary action may include:

46 (1) Reprimand;

47 (2) Probation;

48 (3) Administrative penalties and fines;

49 (4) Mandatory attendance at continuing education seminars or other training;

50 (5) Practicing under supervision or other restriction;

51 (6) Requiring the licensee or holder of a certificate to report to the commissioner or director  
52 for periodic interviews for a specified period of time;

53 (7) Other disciplinary action considered by the ~~commissioner~~ secretary or director to be  
54 necessary to protect the public, including advising other parties whose legitimate interests may  
55 be at risk; or

56 (8) Other sanctions as set forth by legislative rule promulgated pursuant to this article.

57 (k) The ~~commissioner~~ secretary shall suspend or revoke any certificate, temporary  
58 certificate or license if he or she finds the existence of any grounds which would justify the denial  
59 of an application for the certificate, temporary certificate or license if application were then being  
60 made for it.

**§16-4C-10. Procedures for hearing; right of appeal; judicial review.**

1 (a) Hearings are governed by the provisions of article five, chapter twenty-nine a of this  
2 code.

3 (b) The ~~commissioner~~ secretary or director may conduct the hearing or elect to have an  
4 Administrative Law Judge conduct the hearing.

5 (c) If the hearing is conducted by an Administrative Law Judge, the Administrative Law  
6 Judge shall prepare a proposed written order at the conclusion of a hearing containing findings of  
7 fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the  
8 ~~commissioner~~ secretary or director so directs. The ~~commissioner~~ secretary may accept, reject or  
9 modify the decision of the Administrative Law Judge.

10 (d) The ~~commissioner~~ secretary or director has the authority to administer oaths, examine  
11 any person under oath and issue subpoenas and subpoenas duces tecum.

12 (e) If, after a hearing, the ~~commissioner~~ secretary or director determines the licensee or  
13 holder of a certificate has violated any provision of this article or the legislative rules promulgated  
14 pursuant to this article, a formal written decision shall be prepared which contains findings of fact,  
15 conclusions of law and a specific description of the disciplinary actions imposed.

16 (f) The order of the ~~Commissioner~~ secretary or director is final unless vacated or modified  
17 upon judicial review.

18 (g) Any licensee or certificate holder adversely affected by a final order made and entered  
19 by the ~~commissioner~~ secretary or director is entitled to judicial review. All of the pertinent  
20 provisions of section four, article five, chapter twenty-nine-a of this code apply to and govern the  
21 review with like effect as if the provisions of the section were set forth herein.

22 (h) The judgment of the circuit court is final unless reversed, vacated or modified on appeal  
23 to the Supreme Court of Appeals in accordance with the provisions of section one, article six,  
24 chapter twenty-nine-a of this code.

**§16-4C-12. Violations; criminal penalties.**

1 (a) When, as a result of an investigation under this article or otherwise, the ~~commissioner~~  
2 secretary or director has reason to believe that a licensee or certificate holder has committed a  
3 criminal offense, the ~~commissioner~~ secretary or director may bring the information to the attention  
4 of an appropriate law-enforcement official.

5 (b) Any person who violates any law or rule or operates an ambulance with an insufficient  
6 number of emergency medical service personnel aboard when not lawfully permitted to do so, or  
7 who represents himself or herself as a certified emergency medical service personnel knowing  
8 the representation to be untrue, is guilty of a misdemeanor and, upon conviction thereof, shall be  
9 fined not less than \$100 nor more than \$1,000: *Provided*, That after July 1, 2010, the fine shall  
10 not be more than \$5,000.

**§16-4C-13. Actions to enjoin violations; injunctive relief.**

1 Whenever it appears to the ~~commissioner~~ secretary that any person has been or is  
2 violating or is about to violate any provision of this article or any final order of the ~~commissioner~~  
3 secretary, the ~~commissioner~~ secretary may apply in the name of the state, to the circuit court of  
4 the county in which the violation or any part thereof has occurred, is occurring or is about to occur,  
5 for an injunction against the person and any other persons who have been, are or are about to  
6 be, involved in, or in any way participating in, any practices, acts or omissions, so in violation,  
7 enjoining the person or persons from any such violation. The application may be made and  
8 prosecuted to conclusion whether or not any such violation has resulted or shall result in  
9 prosecution or conviction under the provisions of section twelve of this article.

10 Upon application by the ~~commissioner~~ secretary, the circuit courts of this state may by  
11 mandatory or prohibitory injunction compel compliance with the provisions of this article and all  
12 final orders of the ~~commissioner~~ secretary.

13 The circuit court may issue a temporary injunction in any case pending a decision on the  
14 merits of any application filed.

15           The judgment of the circuit court upon any application permitted by the provisions of this  
16 section shall be final unless reversed, vacated or modified on appeal to the Supreme Court of  
17 Appeals. Any such appeal shall be sought in the manner and within the time provided by law for  
18 appeals from circuit courts in other civil cases.

**§16-4C-14. Services that may be performed by emergency medical service personnel.**

1           Notwithstanding any other provision of law, emergency medical service personnel may  
2 provide the services as determined by the ~~commissioner~~ secretary by legislative rule pursuant to  
3 the provisions of article three, chapter twenty-nine-a of this code. Legislative rules governing  
4 provision of these services in a hospital emergency room setting shall be developed by the  
5 ~~commissioner~~ secretary and shall include provisions allowing paramedics to function under the  
6 direct supervision of a registered professional nurse in a hospital emergency room setting.  
7 Provision of these services in an emergency room hospital setting shall not be initiated until a  
8 legislative rule establishing training requirements, standards and requirements for these functions  
9 is in effect. The Legislature therefore directs the ~~commissioner~~ secretary to propose this  
10 legislative rule on or before July 1, 2006. Further, the ~~Commissioner~~ secretary may promulgate  
11 this rule as an emergency rule pursuant to the provisions of section fifteen, article three, chapter  
12 twenty-nine-a of this code. Any rule so promulgated shall provide that paramedics are under the  
13 jurisdiction of the ~~commissioner~~ secretary. The West Virginia Board of Registered Professional  
14 Nurses may propose legislative rules, pursuant to article three, chapter twenty-nine-a of the code  
15 relating to the scope of practice for nurses as those practices relates to overseeing these  
16 paramedics. The provisions of this section and any rules promulgated thereunder may not be  
17 construed to alter in any manner the duties, role or responsibilities of attending physicians  
18 regarding the providing and oversight of patient care.

**§16-4C-15. Powers of emergency medical service attendants, emergency medical  
technicians-basic and emergency medical technicians-paramedic during**

**emergency communications failures and disasters.**

1 (a) In the event of a communications failure between the certified emergency medical  
2 services agency personnel, as defined in section three of this article, and the physician during an  
3 emergency situation, the certified personnel is authorized to deliver the services as authorized in  
4 section fourteen of this article.

5 (b) In the event of a disaster or other occurrence which renders the communication system  
6 ineffective for purposes of adequate individual direction between the physician and the certified  
7 emergency medical services agency personnel, the personnel may perform the services as  
8 authorized pursuant to the provisions of section fourteen and may release immediate control of  
9 the patient to any other emergency medical service personnel in order to provide immediate  
10 services to other patients affected by the disaster or other occurrence.

11 (c) In the event that services are provided under subsection (a) or (b) of this section, the  
12 emergency medical services personnel shall, within five days, provide a report to the  
13 ~~commissioner~~ secretary, on the forms prescribed by him or her, of the services performed, the  
14 identity of the patient and the circumstances justifying the provision of the services. The  
15 ~~commissioner~~ secretary may require any other information deemed necessary.

**§16-4C-16. Limitation of liability; mandatory errors and omissions insurance.**

1 (a) Every person, corporation, ambulance service, emergency medical service provider,  
2 emergency ambulance authority, emergency ambulance service or other person which employs  
3 emergency medical service personnel with or without wages for ambulance service or provides  
4 ambulance service in any manner, shall obtain a policy of insurance insuring the person or entity  
5 and every employee, agent or servant, against loss from the liability imposed by law for damages  
6 arising from any error or omission in the provision of emergency medical services as enumerated  
7 by this article, in an amount no less than \$1 million per incident.

8 (b) No emergency medical service personnel or emergency medical service provider is

9 liable for civil damages or injuries in excess of the amounts for which the person or entity is  
10 actually insured, unless the damages or injuries are intentionally or maliciously inflicted.

11 (c) Every person or entity required by this section to obtain a policy of insurance shall  
12 furnish proof of the existence of the policy to the ~~commissioner~~ secretary on or before January 1  
13 of each calendar year.

14 (d) Any person or entity who fails to secure a policy of insurance before providing  
15 emergency medical services is not entitled to the limited liability created by subsection (b) of this  
16 section: *Provided*, That any physician, who gives instructions to emergency medical service  
17 personnel without being compensated, or who treats any patient transported in an ambulance or  
18 treats any patient prior to the transport, without being compensated, is entitled to the limited  
19 liability provided in subsection (b) of this section.

**§16-4C-20. Service reciprocity agreements for mutual aid.**

1 Any persons or entities providing lawful emergency medical services under the provisions  
2 of this article are hereby authorized in their discretion to enter into and renew service reciprocity  
3 agreements, for any period as they may deem advisable, with the appropriate emergency medical  
4 service providers, county, municipal or other governmental units or in counties contiguous to the  
5 State of West Virginia, in the state of Ohio, the commonwealth of Pennsylvania, the state of  
6 Maryland, the commonwealth of Virginia or the commonwealth of Kentucky, in order to establish  
7 and carry into effect a plan to provide mutual aid across state lines, through the furnishing of  
8 properly certified personnel and equipment for the provision of emergency medical services in  
9 this state and the counties contiguous to this state upon written approval by the commissioner.

10 No person or entity may enter into any such agreement unless the agreement provides  
11 that each of the parties to the agreement shall waive any and all claims against the other parties  
12 thereto, which may arise out of their activities outside of their respective jurisdictions under the  
13 agreement and shall indemnify and save harmless the other parties to the agreement from all

14 claims by third parties for property damages or personal injuries which may arise out of the  
15 activities of the other parties to the agreement outside their respective jurisdictions under the  
16 agreement.

17 The ~~commissioner~~ secretary is hereby authorized to enter into service reciprocity  
18 agreements with appropriate officials in other states for the purpose of providing emergency  
19 medical services to the citizens of this state by emergency medical service personnel properly  
20 certified in their respective state or states. A formal agreement between the ~~commissioner~~  
21 secretary and an authorized official of another state shall be in effect prior to the service being  
22 provided. Individual certification of other state emergency medical service personnel is not  
23 required for purposes of providing services to West Virginia citizens following the creation of the  
24 agreement by the responsible officials.

**§16-4C-21. Restriction for provision of emergency medical services by out-of-state  
emergency medical service personnel or providers of emergency medical services.**

1 The ~~commissioner~~ secretary may issue an order on his or her own motion upon written  
2 request of any emergency medical service provider or county commission in this state, to restrict  
3 an out-of-state provider of emergency medical services or an out-of-state emergency medical  
4 service personnel to a particular geographic area of the State of West Virginia or prohibit the  
5 provider or personnel from providing emergency medical services within the borders of this state  
6 when in the opinion of the commissioner the services are not required or do not meet the  
7 standards set forth herein or those established by rules as authorized by this article.

**§16-4C-23. Authority of the commissioner to make rules.**

1 (a) The ~~commissioner~~ secretary shall propose for promulgation, legislative rules pursuant  
2 to article three, chapter twenty-nine-a of this code to carry out the purposes of this article.

3 (b) Notwithstanding the provisions of subsection (a), section six of this article, the  
4 commissioner shall propose for promulgation a legislative rule regulating fire department rapid

5 response services, pursuant to article three, chapter twenty-nine-a of this code which: (1)  
6 Establishes licensure and certification requirements for fire department rapid response services  
7 who do not charge for their services or transport patients; (2) incorporates necessary applicable  
8 emergency medical services requirements for licensure for "emergency medical services" as the  
9 requirements apply to fire departments and as defined in subsection (d), section three of this  
10 article; and (3) creates an exemption from license and inspection fees for fire departments that  
11 do not charge fees for their services and which authorizes such fire departments to conduct self  
12 inspections of their emergency vehicles in accordance with any applicable state or federal  
13 requirements for emergency medical service vehicles. The commissioner shall file the rule  
14 required by this subsection as an emergency rule on or before July 1, 1999. The Legislature  
15 hereby finds that an emergency exists compelling promulgation of an emergency rule, consistent  
16 with the provisions of this subsection.

NOTE: The purpose of this bill is to move the Office of Emergency Medical Services from the Bureau for Public Health to the Department of Military Affairs and Public Safety.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.